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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 17, 2000

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Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St. SW
Room TW-B204
Washington, D.C. 20554

98-43

Re: **KRZB (FM) Archer City, TX**
BMPH-19990217TB Reply Ref #1800B3-GDG

**"PETITION FOR RECONSIDERATION OF FCC REFUSAL
TO GRANT REQUESTED TOLLING/EXTENSION OF TIME
ON KRZB/ARCHER CITY, TX CONSTRUCTION PERMIT"**

and

**"EMERGENCY MOTION FOR STAY OF TOLLING REQUEST DENIAL AND
IMMEDIATE INSTITUTION OF TOLLING EFFECTIVE ON THE DATE OF
ORDER"**

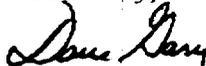
Dear Madam Secretary,

Transmitted herewith is an original, along with requisite copies of the two (2) above-captioned filings: Petition for Reconsideration, and Emergency Motion for Stay, in response to an October 20, 2000 denial order issued by Audio Services Chief Linda Blair in response to KRZB's request for construction permit extension/tolling.

These filings should therefore please be directed to the *Audio Services Chief* for immediate processing.

Please feel free to contact the undersigned, or Texas Grace's legal counsel, John Trent, at (703) 437-8400, should there be any questions regarding these submissions. The Secretary's courtesy is gratefully appreciated.

Sincerely,



Dave Garey
Proprietor, Texas Grace Communications

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
) Tolling/Extension Request for KRZB (FM))
) Construction Permit pursuant)
) to tolling provisions under)
) 47 C. F. R. 73.3598(b)(i)and(ii))
) or other applicable Commission)
) rules, memorandum, precedent,)
) report and order or practice)

Reply Reference # 1800B3-GDG
MM Docket No. 98-43
FCC 98-281; FCC 99-267
KRZB (FM), Archer City, TX
Facility # 79024
Prev. File # (at old community) BPH-960201MB
Current File # (at Archer City) BMPH-199902171B

To: The Chief, Audio Services Division
Mass Media Bureau

**EMERGENCY MOTION FOR STAY OF TOLLING REQUEST DENIAL AND IMMEDIATE
INSTITUTION OF TOLLING EFFECTIVE ON THE DATE OF ORDER**

Pursuant to applicable Commission Rules, Texas Grace Communications ("Texas Grace"), proprietor of station KRZB (FM) licensed to Archer City, Texas, hereby respectfully submits the following Emergency Motion¹ to Stay the effectiveness of the Audio Services Chief's Order of October 20, 2000 ("Order", incorporated herein by reference), wherein the Chief denied the tolling request for the KRZB construction permit as had been filed timely by the permittee over 19 months earlier.

Such Order by the Chief is blatantly prejudicial and irreparably injurious to KRZB's construction, and to permittee Texas Grace's livelihood and business enterprise, therefore necessitating that the effectiveness of the Order be stayed until all corrective redress, inclusive of that available within the Commission itself, and through appeal to the United States Court of Appeals/District of Columbia

¹This Emergency Stay motion is filed in conjunction with and on the same date as Texas Grace's "Petition for Reconsideration of FCC Refusal to Grant Requested Tolling/Extension of Time on KRZB/Archer City, TX Construction Permit" ("Petition", incorporated by reference).

Circuit, if required, may be sought by Texas Grace. Concurrently, with less than four (4) months remaining on the KRZB permit at the time of the Chief's belated and shocking denial of tolling---without any explanation or addressing of the specific, vital issues cited by KRZB as valid encumbrances---KRZB rightfully seeks an immediate tolling of the permit effective with the October 20, 2000 date of the Order pending its ultimate redress.

Texas Grace notes that the element of time when dealing with the lifespan of a construction permit is crucial. Certainly, Texas Grace had to comply with a strict response window timeframe in making its request for tolling².

There is simply no excuse for a lapse in time equating to over 19 months, between the time Texas Grace promptly followed Commission directive to state its request for permit extension with supportive evidence citing qualifying encumbrances, and the Chief's denial Order--again, without any addressing of the specific vital issues raised by KRZB--on October 20, 2000.

Texas Grace had full expectation of three (3) unencumbered years on its KRZB permit as a brand new service at Archer City, yet was granted only one year to develop such a service in contradiction to the Commission's rules, as noted among other encumbrances, inconsistencies and misapplications of law cited in its Petition for Reconsideration.

Understandably, twelve months from the initial time Texas Grace received its first valid permit permitting construction of KRZB's Archer City service (on February 7, 2000) was not quite enough time to complete all necessary facets of construction. Indeed, at the time of the Chief's erroneous denial Order, Texas Grace was finalizing its decision as to which tower, transmitting equipment, and construction vendors to utilize following recent site inspections with emergency management and utility

²Texas Grace timely filed its tolling request on March 5, 1999, which was file-stamped as accepted by the Commission on March 8, 1999, based upon directive of the Audio Services Chief in a letter dated February 16, 1999.

personnel, and its engineer. Despite being on the brink of construction, the shocking denial Order by the Chief--delivered at the "eleventh hour"--clearly stopped Texas Grace in its tracks, interrupting KRZB's construction plan. as this permittee could not justify any further expenditure on a broadcast facility that simply could not be built in so finite a time.

Texas Grace must protest the Chief's sitting on KRZB's timely filed tolling request for the over 19 month period, and respectfully ask the question, "Why couldn't the Chief have replied to this permittee sooner?".

Had the Chief come back with an Order in a more timely fashion, redress could have already been sought without interruption to KRZB's construction. Indeed, the Commission's own streamlined rules equate the time expended by the Commission in considering extension request on a construction permit to be synonymous with an administrative review encumbrance. Certainly, for a permittee to have to wait more than 19 months for an answer on a time-sensitive tolling request--with the very life of its construction permit hanging in the balance--equates to a gross encumbrance which must not be held against the permittee. Such action by the Chief plainly denied Texas Grace an opportunity to timely seek redress on preserving its construction permit, and to complete its planned facility construction.

KRZB therefore rightfully seeks a Stay of the effectiveness of this Order, pending reconsideration by the Commission, and/or appeal before the U.S. District Court. As an application of law, tolling of the KRZB permit should immediately be entered by the Chief effective the October 20, 2000 date of her Order, so that redress may understandably be sought by permittee Texas Grace without further loss to its broadcast enterprise and livelihood during the time of seeking redress.

Respectfully Submitted,

Texas Grace Communications

By: *Dave Garey*

Dave Garey, Proprietor

November 17, 2000

CERTIFICATION

I, Dave Garey, proprietor of Texas Grace Communications, and permittee of KRZB (FM) licensed to Archer City, Texas, do hereby verify that the statements contained in the instant document are true and correct to the best of my knowledge and belief. Although this submission is authored by Texas Grace's proprietor, John Trent remains legal counsel of record for Texas Grace Communications within this proceeding, and it is therefore respectfully requested that he be simultaneously served by the Commission or other interested parties with all relevant procedural or response documents.

Respectfully Submitted By:
Texas Grace Communications



Dave Garey, Proprietor

November 17, 2000

Dave Garey
Texas Grace Communications
P.O. Box 398
Wichita Falls, TX 76307

cc:

John Trent
Putbrese, Hunsaker & Trent
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